**COURT NO.2*

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

REVIEW APPLICATION NO.19 OF 2005
IN
WRIT PETITION (S/S) NO.737 OF 2003

ON BEHALF OF

1. Km. Pratibha Sharma, D/o Late Shri K.D. Sharma
   R/o Marshal Cottage, Mallital, Nainital
2. Km. Sunita Naudiyal,
   D/o Shri Prem Ballabh Naudiyal,
   R/o Jal Nigam Colony, C-1/6, Sector-O, Type-1st
   Moldhar, New Tehri, District Tehri Garhwal
3. Km. Suman, D/o Shri Shambhu Prasad Mamgain
   R/o Dobhaldhara, Near New Dang Colony,
   Srinagar, District Pauri Garhwal

……. Applicants

IN

WRIT PETITION NO. 737 (S/S) OF 2003

Smt. Neeta Lohani, W/o Shri Ishwar Dutt Lohani,
R/o Simalgair Bazaar, Pithoragarh, Distt. Pithoragarh

……. Petitioner

Versus

1. State of Uttaranchal through Secretary,
   Department of Education,
   Uttaranchal Shasan, Dehradun
2. Director of Education, Uttaranchal, Dehradun
3. Joint Director of Education,
   Kumaon Region, Nainital

……. Respondents

Dated: 14.06.2005

Hon'ble P.C. Verma, J.

This review petition has been filed by the applicants in WPSS No.737 of 2003 Smt. Neeta Lohni Vs. State & others with the prayer that the order dated 21.06.2004 may be reviewed.

2. The grounds taken by the applicants in the review petition are that this Court issued direction to the

respondent authorities to correct the mistake in selection of Assistant Teacher (Home Science) in Government Colleges, situated in Kumaon Region of State of Uttaranchal and also republished the list of selected candidates, who have their graduation/degree either in Home Art or Home Science on in Euthenics.

3. That since 1983 i.e. from the date of enforcement of U.P. Subordinate Educational (Trained Graduate Grade) Service Rules, 1983, the candidates, having graduation with Home Science as one subject, are being considered for appointment as Assistant Teacher (Home Science) in Government Colleges and till date more than thousand of candidates, having one subject as Home Science in Graduation, have been appointed and they are still working as Assistant Teacher (Home Science) in their respective colleges of State of Uttar Pradesh and State of Uttaranchal, in which some of them have already been promoted and their services are likely to be effected on the basis of order dated 21.06.2004, passed by this Court, which is not legally justified.

4. That, alongwith the applicants, -10- candidates were appointed as Assistant Teacher (Home Science) in Government colleges, situated in Kumaon Region of State of Uttaranchal, but only in respect of applicants, the orders of termination of services have been passed, whereas the persons namely Km. Kiran Verma, Km. Nirmala Tamta, Km. Manisha Verma, Km. Prabha Bhandari, Km. Rahida, Km. Ritu Bhatt, Km. Suman Kumari, Km. Rachna Chaudhary, Km. Sangeeta Rajput and Km. Nandini Bharti, who are having the same qualifications as the applicant possesses, are still continuing as Assistant Teachers (Home Science) in their respective colleges. The respondent authorities have adopted the pick and choose method and as such the

action of respondent authorities is discriminatory and in violation of Article 14 of the Constitution of India.

5. That the applicants are directly affected by the order-dated 21.06.2004 passed by this Court, therefore, this order is liable to be reviewed by this Court.

6. I have perused the application supported by an affidavit and heard Shri Rajendra Dobhal, learned counsel for the applicants on the review petition.

7. It is being clarified that the judgment and order dated 21.06.2004 shall operate prospectively and shall not affect the appointments already made.

8. With the aforesaid direction, the application for review is disposed of accordingly.

(P.C. Verma, J.)

Rajeev Dang

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL
W.P. No. 737 of 2003 (S/S)

Smt. Neeta Lohani ……. Petitioner

Versus

State of Uttaranchal & others …….. Respondents

Mr. Manoj Tiwari, learned counsel for the petitioner.
Mr. K.P. Upadhayaya, learned Standing Counsel for the State.

Hon'ble P.C. Verma, A.C.J.

By means of this writ petition, the petitioner has prayed for a writ of mandamus to command the respondent No. 3 to cancel the selection / appointment of such candidates who do not posses necessary qualifications for the post of Assistant Mistress L.T. Grade (Home Science) and to hold the selection process afresh in respect of the post of Assistant mistress L.T. Grade (Home Science) strictly in accordance with the provisions of Rule 8(15) of the U.P. Subordinate Education (Trained Graduate Grade) Service Rules, 1983 by ignoring the claims of the persons who do not posses requisite educational qualifications for appointment to the said post.

Heard Mr. Manoj Tiwari, learned counsel for the petitioner and Mr. K.P. Upadhyaya, learned Standing Counsel for the State.

The dispute in this writ petition relates to the appointment of Assistant Mistress (Assistant Teachers), Home Science eligibility for which, is provided in Rule 8(15) of the U.P. Subordinate Educational (Trained Graduates Grade) Service Rules, 1983, which reads as under:

8(15). Assistant Mistress (Home Science)	1. A Degree of a University in Home Art or Home Science or Euthenics. 2. Diploma in L.T., B.T. or B.Ed. Or 3. Three year's Diploma Course of the Lady Ervin College, New Delhi with Intermediate Examination or Senior Cambridge Examination. 4. Working knowledge in Hindi.

Learned counsel for the petitioner has submitted that Home Art or Home Science or Euthenics is independent graduation courses. The candidate who had only one subject in Home Science in their Graduation are not eligible to be appointed.

A counter affidavit has been filed wherein, it has been stated that there were six posts of Assistant Mistress against which six candidates have been selected. Out of these six selected candidates, three candidates possess degree of Home Science and the rest three candidates have their Home Science as one of the subject in their degree courses.

Petitioner is a degree holder in Home Science. Her case has also been considered, but her name figures at serial No. 12 of the merit list. Learned counsel for the petitioner has submitted that unequals have been treated equal i.e. an independent graduate in Home Science has been treated to be equal to that candidate, who has completed his graduation with Home Science as one of the subject. Therefore, the selection of three candidates cannot be sustained.

The Rule is very clear. It provides the graduate in Home Arts or Home Science or Euthenics. If these candidates are available then, the selection has to be made from only these candidates. Selection of those candidates who have completed graduation with one subject of Home Science do not fulfil the eligibility prescribed under the Rules.

Therefore, Joint Director of Education is directed to correct the mistake and republish the list of the selected candidates, who have their graduation / degree either in Home Art or in Home Science or in Euthenics. If the candidates are not available, then the post shall be re-advertised containing the same qualifications and shall be filled strictly in accordance with the eligibility provided under clause 15 of Rule 8 of the Rules known as U.P. Subordinate Educational (Trained Graduates Grade) Service Rules, 1983.

With the aforesaid directions, the writ petition is disposed of finally. No order as to costs.

(P.C. Verma, A.C.J.)

Dt. 21.06.2004
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